

APPEAL NO. 030939
FILED JUNE 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 27, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that she has had disability beginning on August 5, 2002, and continuing through the date of the CCH. The appellant (carrier) appealed the hearing officer's determinations, and the claimant responded.

DECISION

Affirmed, on other grounds.

The claimant was employed as a commercial passenger bus driver for a national transit company. Earlier in her career as a bus driver, the company presented two outstanding performance awards to the claimant for stopping her bus and rescuing an elderly woman from a burning home. In this case, during a lay-over between shifts, the claimant reported to the bus terminal awaiting arrival of the bus that she would drive on her next shift. On the street beside the bus terminal, a woman riding a motorcycle was struck by a car and thrown to the curb of the street. While other bus terminal employees directed traffic from the accident scene, the claimant and two other individuals attempted to render aid to the accident victim. The unfortunate woman asked the claimant to retrieve her purse that had landed along some bushes on the same side of the street. The claimant retrieved the purse, tripped on the curb, smashing her left knee into the ground. There was evidence from the claimant's testimony that the motorcycle accident slowed traffic down around the bus terminal to the point of blocking the driveway so that people could not get into the bus station. There is no dispute that the claimant suffered an injury to her left knee. The dispute is whether the claimant injured her knee during the course and scope of her employment

When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the hearing officer's resolution of the injury or disability issues. We do decline to adopt the hearing officer's rationale in determining that the claimant injured her knee in the course and scope of her employment because this individual claimant's past awards for heroism, presented to her by the employer, indicate that the employer expected this claimant to render assistance and provide emergency care to the victim of a motorcycle accident that occurred, as related above. We disagree with the hearing officer's determination that under the standard set forth in Texas Employers' Insurance Association v. Thomas, 415 S.W.2d 18 (Tex. Civ. App.-Fort Worth 1967, no writ), that the claimant in this case would not be found to be injured

in the course and scope of employment. The Thomas case involved a truck driver who came upon an accident which blocked the way. The truck driver was allowed recovery for injuries sustained while he was searching for the wallet of one of the accident victims, the court stated that "[a] servant does not cease to be in the course of his employment merely because he is not actually engaged in doing what is specifically prescribed to him, if in the course of his employment an emergency arises, and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer." The court noted that the evidence supported the notion that the truck driver stopped because the road was blocked and that his helping to look for the wallet was "a continuing part of clearing the road so he could proceed with his employer's business." Although in the instant case, the hearing officer did not make a finding that the claimant was involved in an emergency situation, the evidence of record clearly indicates that the claimant was confronted with an emergency situation and acted accordingly to advance the business interest of the employer. In doing so, the claimant injured her knee in the course and scope of her employment. The evidence also supports the hearing officer's disability determination.

The decision and order of the hearing officer are affirmed on other grounds.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRIT
6600 CAMPUS CIRCLE DR. EAST, SUITE 300
IRVING, TEXAS 75063.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge